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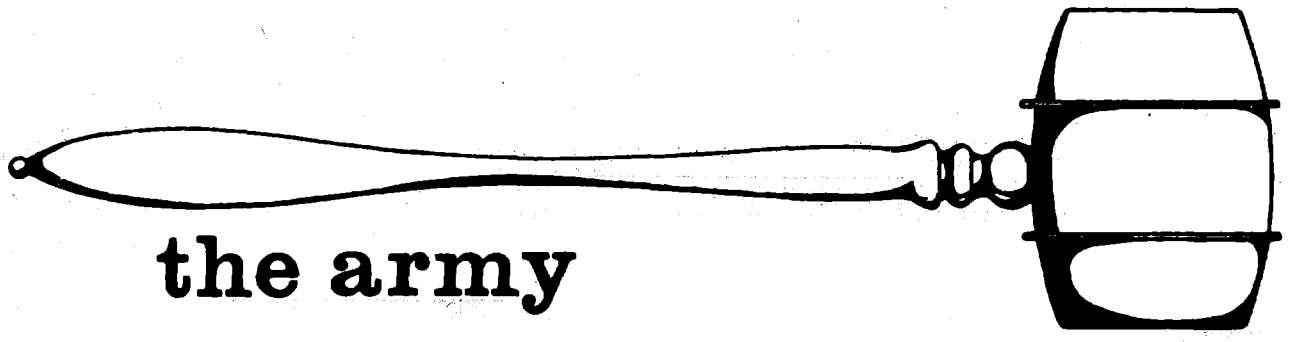

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Trends in Water Resource Preservation Law of DOD Concern

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Judicial concern has been voiced about the U.S. Army Corps of Engineers' dominion over private property and State rights.[1] One wonders about the basis for this anxiety considering that its origin is the Corps' protection of navigable waters. When one has a full understanding of the term navigable waters, this concern will be appreciated.

The term navigable waters has different meanings, sometimes overlapping, in different contexts.[2] The term relates to admiralty jurisdiction of Federal courts, to riparian rights under State law, to the Federal navigation servitude, and to Federal regulatory jurisdiction. The last two categories are the most synonomous. This article treats the last category, especially with respect to the Corps' jurisdiction under Section 10 of the River and Harbor Act of 1899 (RHA)[3] and Section 404 of the Clean Water Act (CWA).[4]

Before we explore the different notions of navigable waters in the context of the Corps' regulatory jurisdiction, some brief mention should be made of the activities regulated by the Corps under the RHA and CWA and of the Corps' decisionmaking process in regard to them.

As will be seen, the navigable waters covered under the CWA, including "nonnavigable" wetlands, are broader than those covered under the RHA; however, the reverse is true about activity coverage. The RHA virtually covers all work and structures in or affecting navigable waters, Even non-physical obstructions may be regulated under the RHA.[5] The CWA superficially only narrowly covers the discharge of dredged or fill material into navigable waters. Structures and excavation are literally excluded. However, even "de minimis" discharges, such as those resulting from landclearing or farming in pristine areas, may arguably be regulated.[6] The CWA also covers the discharges of material into navigable waters that is not normally considered pollutant-like if that material is alien to the waterbody, such as rock.[7] So the CWA's activity coverage is like an amoeba, it changes shape in the field in order to devour what is desired.

The Corps' decisionmaking process under both acts usually includes application, proclamation, coordination, information, argumentation, consideration, and then determination.[8] Most permit cases call for a public interest review.[9] Factors in this review are many and include conservation, economics, aesthetics, general environmental concerns, historic values, fish and wildlife values, flood damage prevention, land use, navigation, recreation, water supply, water quality, energy needs, safety, and food production.[10] Non-adjudicatory public hearings are authorized for project opponents, and proponents, if that forum will aid the decisionmaking.[11] In cases involving important wetlands, additional policy factors are involved. They are as follows: the Corps cannot grant a permit to develop such areas unless project benefits outweigh ecological harm, i.e., the project is otherwise in the public interest; the project is primarily dependent upon being located in an aquatic environment; and, there are no feasible nonwetland alternative sites for the project.[12] For instance, a permit for ring levees for soybean production in wetlands should probably be issued if there are no feasible nonwetland farm sites available; whereas, a permit to fill waterfront lots in wetlands for recreational housing should probably not be issued if there are feasible nonwetland sites for housing available. What a "feasible" nonwetland site is, is the linchpin of this wetland policy. Should the Corps consider the economic powers of the applicant in acquiring those alternative sites? May the Corps deny Town X from developing in wetlands in favor of societal growth to "dryer" Town Y? These questions involve

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the Fifth and Tenth Amendment questions that are looming on the horizon.[13] This policy is obviously trying to shift development into nonwetlands. The Corps' final decision must consider all relevant factors, not constitute a clear error of judgment, and be in accord with its valid regulations.[14] Now we will turn to the myriad of waters covered.

Navigable waters under the RHA are synonomous with *navigable waters of the United States* in the transportation and tidewater sense that are governed by the Federal navigation servitude which spawned from the Commerce Clause.[15] This servitude allows the Corps to use waters and land below the lateral limits of such waters in order to control, regulate, and improve navigation without paying private landowners just compensation.[16] Navigable waters under the RHA thus developed to include indelibly 1.) waters which were, are, or are susceptible of being used to transport foreign or interstate commerce,[17] or 2.) waters which are or were subject to the ebb and flow of tide.[18] The first category of waters are navigable in fact, but they must form by themselves or in conjunction with other waterways highways of commerce.[19] The second category of waters are navigable in law.[20] Of course, many tidal waterbodies are navigable in fact too. Artificial canals which meet the tidal test or which actually support interstate commerce are covered by the RHA even if privately owned.[21] Shallow tidal marshes would also be regulated.[22] The lateral limits of jurisdiction over these waters differ in riverine, lacustrine (lake), and tidal situations.

The ordinary high water mark (OHWM) sets the lateral limit of these navigable waters in nontidal riverine and lacustrine situations.[23] This mark is normally determined by physical markings on the shore established by river flow, such as the destruction of terrestrial vegetation, the presence of litter and debris, a clear natural bank line, shelving, and changes in soil.[24] The OHWM is not normally a mathematical determination; however, hydrological surveys showing average water stages and land elevations may be used if physical markings are not definite, such as in permanently inundated swamps or in lakes with little or with erratic flow.[25] There is also authority for interpolating the OHWM from areas where physical markings are evident and extending it to areas where they are not apparent.[26] By interpolation, sloughs and overflowed swamps are excludable from the OHWM. The presence of terrestrial vegetation, including wetland vegetation intolerant of permanent flooding,[27] in most swamps should eliminate them from the OHWM anyway.

The mean high water line (MHWL) sets the lateral limit of navigable waters subject to the ebb and flow of tide.[28] This line is normally a mathematical determination of the daily high tide.[29] It should be noted that estuarine rivers or streams which empty into the sea are at times subject to a backwater "dam" effect which obstructs headwater flow.[30] The reaction of tidal flow and headwater flow at these times causes river stages to rise and fall with the sea. This interaction is not, except possibly at a river's mouth and lowest reaches, the ebb and flow of tide in the legal sense of being the flux and reflux of the sea. So as long as the direction of a river's velocity is toward the sea only, its lateral limits should be set by the OHWM and not by the often broader MHWL test. Whether a court will rule *res nova* that the "dam" effect subjects certain rivers to the MHWL test because of indirect tidal influence remains to be seen.

Although the OHWM and MHWL tests are often fraught with difficulty, this difficulty is compounded in historically navigable situations, e.g., in dikes, formerly navigable in fact or tidal waters.[31] These waters are indelibly navigable, unless congressionally declared to be non-navigable.[32] In these cases, the historic OHWM or MHWL should govern.[33] However, historic configurations are often difficult to reconstruct. Reliance must be placed on hydrological and geomorphological data, if available.

One particular aspect of the RHA's coverage of waters that transcends the OHWM and MHWL and blazes the trail for the CWA is its coverage of work and structures beyond navigable waters which, nevertheless, have an impact upon them.[34] This "impact" theory of

RHA jurisdiction is based on its proscription against altering or modifying in any manner the course, location, condition, or capacity of navigable waters.[35] For instance, a water intake structure need not be placed within a navigable water to be subject to the RHA if, wherever located, it is operated to withdraw water from navigable waters, thereby affecting flow, circulation, or navigation.[36] So far, the impacts which elicit jurisdiction under the RHA over works beyond the OHWM and MHWL are hydrological ones only (water flow, velocity, and so forth), and do not include purely ecological impacts such as to water quality.[37] If general ecology evokes the RHA "impact" theory of jurisdiction, then most wetlands contiguous with navigable waters of the United States but beyond the OHWM or MHWL would be regulated without the need for the CWA. This RHA regulation would be based on the notion that wetlands can cleanse navigable waterways, provide nutrients for aquatic life therein, and can be sources of pollution if wantonly spoiled upon when high tides or river stages flood them and wash pollutants into the waterways. Thus activities in those wetlands can affect the *condition* of nearby navigable waterways by adversely impacting water quality and aquatic life.

The CWA overlaps the RHA's coverage of navigable waters of the United States. However, the navigable waters of the CWA include waters beyond the OHWM and MHWL. Navigable waters here are synonomous with *waters of the United States* in a geographic sense rather than in the "technical" tidewater or transportation sense of the RHA.[38] Regulation of waters under the CWA is to the maximum extent permissible under the Commerce Clause.[39]

The concept of commerce here picks up where the RHA's impact theory leaves off. That is, purely ecological attributes of a water places it in the "stream of cemmerce".[40] Water cleansing, habitat, nutrient production, and other qualities of waters have an effect on interstate commerce when one considers the need for water purification for industrial and commercial water supply; interstate travelling aspects of duck hunting, bird watching, wildlife photography, fishing, and other forms of nature recreation; and food sources for life caught for commercial fishing.[41] Hence, waters subject to the CWA include swamps, marshes, prairie potholes, intrastate lakes, wet bottoms, normally dry arroyos, and so forth, as well as the waters discussed under the RHA.[42]

Wetlands are the most controversial waters under the CWA. Wetlands are areas inundated at a sufficiency to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.[43] Wetlands determination involves the eclectic approach of considering wet soils, hydrology, and vegetation to establish jurisdiction. A *vegetative* test so far has been adopted by the Corps as the most practical and repeatable method for use in the field. It is felt that vegetation tells enough about the extent and duration of flooding and about the wetness of soils to draw rational lines for jurisdictional purposes. Under this test one examines whether the vegetation that is common to abundant in an area is normally associated with aquatic or semiaquatic plant communities.[44] The problems here lie with the subjectivity in determining what vegetation is prevalent and with the lack of uniformity and of legislative rulemaking on lists of wetland indicators. This test can also be criticized for not focusing enough on the dynamics of wetland ecology which an evaluation of geomorphology, all vegetation, soil types, hydrology, animal life, and so forth will provide.[45] An *ecosystematic* approach considering these additional factors could be an alternative wetland test. However, no test can be perfect. Just like an OHWM or a MHWL is no more than a feasible cutoff point for RHA jurisdiction even though it does not measure the maximum lateral extreme of navigable waters of the United States, a jurisdictional line or mark under the CWA need not necessarily include everything that is "wet" in order to fulfill the mandate of covering waters of the United States to the maximum extent legally permissible under the Commerce Clause. Unfortunately, there is no oracle that will tell the Corps exactly how far

it must go to achieve optimum protection for wetlands. But, the "dryer" the area included, the more danger that regultion will become a taking.

In reality, whether an area is a wetland is not the key to CWA jurisdiction. The CWA covers more waters than traditionally navigable ones or wetlands, it covers even normally dry arroyos.[46] Therefore, pure hydrology showing peak stages over flood plains may be enough to evoke jurisdiction. Such waters simply would not be subject to the strict wetland policy. One may wonder if Congress intended the CWA to be that broad though.[47]

Thus, the CWA and RHA, with the coverage of private canals, wetlands, impacts on navigable waters from dry land, and the like, can have grave results on land use. And, once jurisdiction is evoked by an aspect of a proposal, the Corps' permit process covers the total activity or plan of development, whether the remainder is in regulated waters or not.[48] It remains to be seen whether permit denial will be held to constitute inverse condemnation and a taking in the Constitutional sense requiring the payment of just compensation.[49]

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FOOTNOTES

[1] *Taylor v. District Engineer, U.S. Army Corps, Etc.*, 567 F.2d 1332, 1340 (5th Cir. 1978).

[2] See *United States v. Holt Bank*, 270 U.S. 49, 55–6 (1926); *In Re Garnett*, 141 U.S. 1, 12, 15 (1891); *Wisconsin v. Federal Power Commission*, 214 F.2d 334, 336–7 (7th Cir. 1954), *Cert. denied* 348 U.S. 883 (1954); and *United States v. Appalachian Electric Power Co.* 311 U.S. 377, 408 (1941).

[3] 33 U.S.C. § 403.

[4] 33 U.S.C. § 1344.

[5] *United States v. Kaiser Aetna*, 584 F.2d 378 (9th Cir.) 1978), U.S. Appeal pending.

[6] *Avoyelles Sportmen's League, Inc. v. Alexander*, 13 E.R.C. 1353 (W.D.La. 1979).

[7] *Minnehaha Creek Watershed District v. Hoffman*, 13 E.R.C. 1009, 1015–17 (8th Cir. 1979).

[8] *United States v. Moretti*, 478 F.2d 418, 425 (5th Cir. 1973).

[9] 33 C.F.R. § 320.4(a)(1); 42 Fed. Reg. 37132 (1977).

[10] *Id.*

[11] *Taylor v. District Engineer, supra* note 1, and 33 C.F.R. § 327. See also *United States v. Alleyne*, 454 F.Supp. 1164, 1173 (S.D.N.Y. 1978).

[12] 33 C.F.R. § 320.4(b)(4).

[13] See Binderman, *The Marshland Issue: Legislative Compensation for Losses Resulting from Government Land Use Regulations-From Inverse Condemnation to Productive Use*, Land Use and Environmental Law Review 29 (1978); and *National League of Cities v. Usery*, 426 U.S. 833, 96 S.Ct. 2465, 2474 (1976).

[14] See *Taylor v. District Engineer, supra* note 1, and 5 U.S.C. § 706 (A) and (D).

[15] *United States v. Virginia Electric and Power Co.*, 365 U.S. 624 (1961); and *United States v. Stoeco Homes, Inc.* 498 F.2d 597 (3rd Cir. 1974), *Cert. den.* 420 U.S. 927 (1975).

[16] *Id.*

[17] 33 C.F.R. § 329.4.

[18] *Id.*

[19] *Minnehaha Creek Watershed District v. Hoffman, supra* note 7 at page 1013, n. 6.

[20] See, e.g., 33 C.F.R. § 329.12(b).

[21] 33 C.F.R. § 329.8(a)(1); and *United States v. Stoeco Homes, Inc.*, supra note 15.

[22] *United States v. Stoeco Homes Inc., supra* note 15.

[23] 33 CF.R. § 329.11; *Borough of Ford City v. United States*, 345 F.2d 645, 647–51 (3rd Cir. 1965), *Cert. den.* 382 U.S. 902 (1965).

[24] *Id.*

[25] See *P.F.Z. Properties, Inc. v. Train*, 393 F. Supp. 1370, 1381–82 (D.D.C. 1975); and *United States v. Cameron*, 12 E.R.C. 2005, 2014–15 (M.D. Fla. 1978).

[26] *Borough of Ford City v. United States, supra* at note 23 at page 648.

[27] *P.F.Z. Properties v. Train, supra* note 25; *Goose Creek Hunting Club, Inc. v. United States*, 518 F.2d 579 (Ct. Cl. 1975); and *United States v. Cameron, supra* note 25.

[28] 33 C.F.R. § 329.12; *United States v. Holland*, 373 F. Supp. 665 (M.D. Fla. 1974); and *Leslie Salt Co. v. Froehlke*, 578 F.2d 742 (9th Cir. 1978).

[29] *Borax Consolidated, Ltd. v. City of Los Angeles*, 296 U.S. 10, 26–27 (1935).

[30] See, e.g., *Handbook of Applied Hydrology* (McGraw-Hill 1964), at p. 15–35, by analogy.

[31] See, e.g., *Leslie Salt Co. v. Froehlke, supra* note 28.

[32] See 33 U.S.C. § 21 et seq. See 33 U.S.C. § 591, and *State Water Control Board v. Hoffman*, 574 F.2d 191 (4th Cir. 1978).

[33] *Leslie Salt Co. v. Froehlke, supra* note 28 at p. 753.

[34] See *Sierra Club v. Morton*, 400 F. Supp. 610, 628, 632 (N.D. Cal. 1975); *United States v. Holland, supra* note 28; and *United States v. Cannon*, 363 F. Supp. 1045 (D.Del. 1973).

[35] 33 U.S.C. § 403.

[36] See *Sierra Club v. Morton, supra* note 34.

[37] See cases *supra* note 34. See *U.S. v. Cannon* at p. 1051 in particular.

[38] *Natural Resources Defense Council v. Callaway*, 392 F. Supp. 685 (D.D.C. 1975).

[39] *Id.*

[40] See, e.g., *Katzenbach v. McClung* 379 U.S. 294, 85 S. Ct. 377 (1964); and *Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241, 85 S. Ct. 348 (1964). See also *United States v. Holland, supra* note 28 at pages 673 to 676.

[41] 33 C.F.R. § 320.4(b)(2).

[42] 33 C.F.R. § 323.2(a) and (c). See also *Leslie Salt Co. v. Froehlke, supra* note 28 at pages 753–56.

[43] 33 C.F.R. § 323.2(c).

[44] *United States v. Fleming Plantations*, 12 E.R.C. 1705 (E.D.La. 1978).

[45] *See, e.g. Our Nations Wetlands* (Interagency Task Force Report 1978) at pages 5–7. Some, nevertheless, criticize the usefulness of these additional factors because they allow for unfettered discretion, they do not necessarily reflect the present hyrologic regime of an area, relevant data is not always available on them, they allow for the regulation of quite dry areas, and so forth.

[46] *See Leslie Salt Co. v. Froehlke, supra* note 28 at p. 755. The US Environmental Protection Agency, pursuant to a September 5, 1979 US Attorney General Opinion to the Secretary of the Army, has the final authority to determine the reach of "navigable waters" under the CWA, including Section 404. Present Corps regulations grant a nationwide permit under Section 404 for discharges of dredged or fill material into certain unidentified waters, e.g., isolated wetlands and prairie potholes. *See* 33 C.F.R. § 323.4–2. Individual permit authority over these waters is discretionary. *See* 33 C.F.R. § 323.4–4. However, if these other waters are part of the surface tributary system of interstate water or navigable waters of the United States, individual permits for discharges are still needed. *See* 33 C.F.R. §§ 323.2(a)(5) and 323.4–2(a)(4).

[47] See, e.g., 123 Cong. Rec. 13610–13611 (daily ed. Aug. 4, 1977).

[48] 33 C.F.R. 320.4(a)(1).

[49] Binderman, *supra* note 13.

"Confessions and Corroboration: Don't Let the 'Corpus Delicti'[1] Climb Out of the Coffin"

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Prior to 1954, the law relating to corroboration of confessions required evidence other than the confession or admission that the offense had probably been committed by someone. This rule, known generally as the "corpus delicti" rule required either direct or circumstantial evidence of each element of an offense, except the identity of the perpetrator. This rule was incorporated into the 1951 edition of the Manual for Courts-Martial as a rule of evidence binding in such courts.

In 1954, the United States Supreme Court put this rule to rest in its decision in *Opper v. United States*[2]. In adopting a more lenient requirement, the Court departed from its own more stringent standard in the case of *Warszower v. United States*[3]. However, military courts were not destined to follow the rule for another 15 years.

The facts in *Opper*[4] give one a strong feeling of deja vu in light of the recent scandals involving the General Services Administration. Opper was a contractor supplying survival vest components to the Air Force. In securing the award of the contract he had bribed a federal employee. Opper admitted in a pre-trial statement that he had, in fact, given money to the employee, but as a loan rather than a bribe. The evidence adduced by the Government corroborated some of the elements of the offense, but not all.

The Supreme Court held that the pre-trial admission could come into evidence as long as the Government introduced substantial evidence independent of the admission tending to establish its trustworthiness. The Court protected the reputation of the judicial process from the use of completely uncorroborated (and possibly false) confessions by this requirement.

In *Smith v. United States*[5], the Court provided further instruction in the operation of the new rule. The burden of proof was, of course, still on the Government to establish each element of an offense, regardless of the presence of a confession or admission. But a properly corroborated confession could now be

used without independent evidence of each and every element of the offense. One method of corroboration now available to the Government was "independent evidence to bolster the confession itself and thereby prove the offense through the statements of the accused."[6]

The old "corpus delicti" rule's demise was surely not mourned by prosecutors. But any elation on the part of military trial counsel would have been about 15 years premature. In *United States v. Smith*[7], the United States Court of Military Appeals held that the old rule was still the law in courts-martial because of the President's authority to prescribe rules of evidence pursuant to Article 36 of the Uniform Code of Military Justice.

Executive action was finally required to put an end to the old rule in the military. This was accomplished by then-President Nixon's promulgation of the Revised edition of the Manual. But "corpus delicti" was a hardy rule that refused to go away. The Court of Military Appeals declined to apply the new rule even after its promulgation on the theory that applying the more relaxed rule to a confession obtained *before* the effective date of the Revised edition of the Manual was constitutionally impermissible as an *ex post facto* law. *United States v. Hise*[8]. The new rule was finally applied in the military in *United States v. Stricklin*[9].

Once the Supreme Court's new rule was promulgated in the new Manual and finally adopted in the *Stricklin*[10] case, there was relatively little litigation, at least on the appellate level, thereafter.

In the case of *United States v. Crider*[11], the issue was raised again. The facts involved a particularly gruesome series of murders committed by a Marine on a small group of Vietnamese prisoners of war. During a daylight ambush, Lance Corporal Crider was entrusted with four prisoners, three females and a young boy. He killed them all, either alone or in concert with another Marine named Reese, and hid the bodies in a bunker that was later collapsed with a hand grenade.

At trial, another lance corporal who was a member of the patrol named Mazzariello testified to an admission made by Crider. Mazzariello asked Crider whether he had killed the prisoners left in his care. Crider replied in the affirmative and when asked how this had been accomplished, replied, "I stabbed them once in the throat and I bashed their skulls in." Both at trial and on appeal, admission of this statement into evidence was opposed on the ground that the statement was totally uncorroborated. At the time Crider made the admission to Mazzariello, he had a mallet or grain crusher in his hand. There was other evidence in the record that Crider had struck one of the victims with a bamboo stick and that he later picked up a brick or hard object about the size of a tennis ball and was observed with his arm in the act of throwing this object at one of the victims. There were three pools of what was apparently blood on the ground near the bunker where the prisoners were being detained. The body of one woman, with "blood marks on her back," was seen by one witness, and four lifeless bodies were observed in the bunker.

Citing Paragraph 140*a* of the new Manual, as well as *Opper*[12], the Navy Court of Military Review held that the admission was sufficiently corroborated.

The Air Force Court of Military Review passed on the issue of sufficiency of corroboration in *United States v. Richards*[13]. Again, citing *Opper*[14], and the new Manual, as well as *Smith*[15], the Court found sufficient corroboration of a confession to drug use through the testimony of a lay witness was shown to be familiar with drugs and their effects as a result of his law enforcement training. The Court made it clear that such testimony would never have been sufficient, standing alone, to convict. But on the issue of corroboration, the testimony was sufficient to justify an inference of the truth of the confession.

In a more recent case, the Air Force Court applied the rule in a case involving theft from the mails, *United States v. Springer*[16]. Sergeant Springer admitted to agents of the Office of Special Investigations (OSI) that he had been

stealing from the mails over a substantial period of time. He surrendered a large number of the stolen items to the OSI.

At trial, a stipulation of fact was used as independent envidence to show that certain items surrendered by the accused had belonged to someone other than the accused and that these items had been properly placed in the mails.

Another stipulation relating to certain other items indicated that the accused had surrendered them and what the values of those items were. There was no indication that the items did not belong to the accused or that they had been taken after being properly deposited in the mails.

The Air Force Court found stipulation a proper vehicle for establishing independent evidence to corroborate the confession. However, the Court found sufficient corroboration only with respect to the more specific stipulation and did not allow one set of articles admittedly stolen from the mails to corroborate the other set about whose origin the stipulation was silent. Although deciding the issue favorably to the accused, the Court stated:

> We do believe, however, that under proper circumstances, evidence of similar offenses could provide the required corroboration such as when the items are alike or taken over a short period of time. Other factors that could be considered include the numbe of items taken, when the number of items far exceed the individual's reasonable needs, and when the items are stored with items as to which there is independent evidence[17].

The extended period of time involved, and the absence of any of the other considerations resulted in a finding of insufficient corroboration as to the confession regarding the items mentioned in the second stipulation.

The Army Court of Military Review examined the rule most recently in *United States v. Bailey*[18]. Private Bailey's cache of marijuana was discovered in a bucket in the latrine. Thereafter a statement was obtained from him wherein he admitted ownership of the substance, as well as having used some of it before it was found. He also admitted introducing the marijuana onto a military installation, transferring it and selling it. On appeal, corroboration of his confession was attacked as insufficient as to transfer, sale and wrongful introduction. The existence of the substance corroborated possession and possession sufficiently corroborated wrongful introduction, but the Army Court found "a total void" of independent corroboration as to transfer and sale and dismissed that specification.

In *United States v. Seigle*[19], the Court of Military Appeals again applied the new Manual provision regarding corroboration. Airman Seigle was charged with the theft of 74 record albums and a phonograph from the base exchange. These items were surrendered to the authorities along with a written confession that he had stolen the items. Four fellow airmen testified that they had seen Seigle take anywhere from two to 15 albums at a time from the base exchange without paying for them. There was also testimony that the exchange carried the same type of phonograph as that surrendered by Seigle and that the box containing the record player, as well as some of the albums, carried the same type of price tags as used by the exchange. The Court found sufficient corroboration as to the theft of all the items.

In the most recent Court of Military Appeals case on the subject, *United States v. McMurry*[20], Corporal McMurry was accused of possession and use of heroin. The facts indicated that a Private Mason was the principal actor in bringing ten packets of heroin contained in balloons onto a naval air station. The balloons were then hidden in the leg of an ironing board. Private McMurry was aware of the location of the drug. He made a statement prior to trial indicating use of heroin, but was acquitted of that specification. The Navy Court of Military Review had held that evidence of use could still be considered as to the specification alleging possession. But, as part of its ground for reversing the possession conviction, the Court of Mil-

itary Appeals noted that the only evidence of possession came from the accused's own statement, and this statement was uncorroborated, citing *United States v. Seigle*[21].

Notwithstanding the tortured death of the "corpus delicti" rule of corroboration, trial counsel and appellate counsel for the Government need to be aware of the former and present rules to prevent use of the former rule as a "red herring" either at trial or on appeal.

In *U.S. v. Craig*, CM 437772 (ACMR 27 Jun 1979) (unpublished), a sergeant admitted that he had deliberately placed his two-year old daughter's feet in a bucket of hot water. The child's feet were covered by second degree burns. However, the accused had never related to the CID in so many words what he had done. He had merely said, in response to questioning, "Yes, I did it." The physical evidence provided some corroboration in that the burns were uniform over the child's feet and terminated in circles around the child's ankles. Both parents had indicated to hospital personnel that the burning agent had been hot water from the tap in their government quarters.

The appellant had made a detailed confession to a number of larcenies of meat from the mess hall. In the confession he listed the type and amount of meat stolen, the date, or at least the time frame of the theft, and the disposition of the stolen items. At trial, he repudiated his confession and challenged its voluntariness. Corroborative evidence came from inventories showing large amounts of meat missing from the mess hall and eyewitness testimony showing that the accused placed boxes similar to those in which meat was received at the mess hall into his own and another private automobile belonging to the mess sergeant.

Although not specifically referred to as the "corpus delicti" rule in his appellate brief, the appellant did allege a failure of corroboration as to several of the specifications charged. Although the error alleged was not accompanied by the "corpus delicti" appellation, it was, nevertheless, an attempt to breathe new life into the old rule.

The mess hall case involved a confession to a number of thefts with independent evidence as to several of them, but by no means all. Fortunately for appellate counsel for the Government, independent evidence as to each larceny is not required. If it were, "corpus delicti" would be back in business.

The corroboration necessary to show trustworthiness, which is all the new rule requires, was supplied partly by direct evidence (the testimony of eyewitnesses and the results of the inventories). But the corroboration of several of the other larcenies confessed to came through the process known as "dovetailing." One aspect of dovetailing is seen in the very detail of the confession itself. The presence of such detail as the types and amounts of meat stolen, the dates stolen and what became of the stolen meat indicated firsthand knowledge and a likelihood that the confession was true.

Dovetailing usually refers to the correlation between the fully corroborated facts and the details of the confession. If the confession is corroborated in many of its particulars, it is a permissible inference that otherwise uncorroborated portions of the confession are similarly trustworthy. Since the inventories showed that meat was missing in amounts far in excess of that which could be directly corroborated and the appellant had been seen asporting meat on several occasions, dovetailing permits an inference of trustworthiness as to the whole confession. Independent corroboration of each element of each charged offense is simply no longer required.

In light of the peculiar regenerative powers of the old rule, Government counsel would be well advised to be ready to meet the old rule in whatever guise opposing counsel may fashion.

FOOTNOTES

[1] For a general discussion of the topic of corroboration of confessions, "dovetailing," and the fountainhead Supreme Court cases of *Opper v. United States*, 348 U.S. 84, 75 S.Ct. 158, 99 L.Ed. 101 (1954) and *Smith v. United States*, 348 U.S. 147, 75 S.Ct. 194, 99 L.Ed. 192 (1954), *see* Department of the Army

Pamphlet, 27-22, *Military Criminal Law Evidence* (August 1975), Chapter 36.

[2] *Opper v. United States*, 348 U.S. 84, 75 S.Ct. 158, 99 L.Ed. 101 (1954).

[3] *Warszower v. United States*, 312 U.S. 342, 61 S.Ct. 603, 85 L.Ed. 876 (1941).

[4] *Opper, supra.*

[5] *Smith v. United States*, 348 U.S. 147, 75 S.Ct. 194, 99 L.Ed. 192 (1954).

[6] *Id.*, 156.

[7] *United States v. Smith*, 13 USCMA 105, 32 CMR 105 (1962).

[8] *United States v. Hise*, 20 USCMA 3, 42 CMR 195 (1970).

[9] *United States v. Stricklin*, 20 USCMA 609, 44 CMR 39 (1971).

[10] *Id.*

[11] *United States v. Crider*, 45 CMR 815 (NCMR 1972).

[12] *Opper, supra.*

[13] *United States v. Richards*, 47 CMR 544 (AFCMR 1973).

[14] *Opper, supra.*

[15] *Smith v. United States, supra.*

[16] *United States v. Springer*, 5 M.J. 590 (AFCMR 1978).

[17] *Id.*, 593.

[18] *United States v. Bailey*, 3 M.J. 799 (ACMR 1977).

[19] *United States v. Seigle*, 22 USCMA 403, USCMA 403, 47 CMR 340 (1973).

[20] *United States v. McMurry*, 6 M.J. 348 (CMA 1979).

[21] *Seigle, supra.*

[22] *Opper, supra.*

[23] *Stricklin, supra.*

ABA Annual Meeting and Young Lawyers Division Programs

Major Ted B. Borek, ABA Young Lawyer Division Delegate,
and Captain Jan W. Serene, Member,
Military Service Lawyers Committee

The annual meeting of the American Bar Association was held in Dallas, Texas, from 8 to 13 August 1979. Items of interest addressed at that meeting and an update on other ABA/YLD activities follow.

Military Related Programs. There were numerous programs at the annual meeting that were of particular interest to military lawyers. For example, one program addressed recent legislation to amend the UCMJ, and another considered whether additional changes, if any, should be made. A showcase program sponsored by several ABA entities included a panel discussion about the selective service system. Views varied on whether a system of registration should be reimplemented. One view was that registration was needed to meet manpower requirements in the event of an emergency. Another view was that registration would be very costly and of little benefit. A third position questioned whether registration would entail an unconstitutional deprivation of individual freedom.

Military Related Resolutions. It is evident that the views expressed at the military related programs covered a wide variety of positions. However, the House of Delegates of the American Bar Association considered several resolutions and took positions on several specific issues involving military law. For example, based on resolutions prepared by the Standing Committee on Military Law the House of Delegates voted to support retention and strengthening of the Court of Military Appeals (CMA) and to oppose efforts to abolish or merge CMA into other courts. It also favored increasing the the terms of CMA judges, and it supported creation of appellate jurisdiction in the Supreme Court of the United States to review decisions of CMA. In another resolution the House supported increasing from one to two the peremptory challenges in a general court-martial, and it favored amending the UCMJ to allow delegation to judge advocates of the authority to hold hearings on vacation of suspended sentences. It also favored authorizing CMA to have rehearings en banc. It supported amendment of Article 2, UCMJ, to provide that voluntary enlistment shall be valid for the purpose of creating military criminal jurisdiction, and it also supported amendment to Article 36, UCMJ, to specify that the President has power to prescribe rules for pre- and post-trial proce-

dures. In two other resolutions, both prepared by the Standing Committee on Lawyers in the Armed Forces, the House of Delegates endorsed a program of training for Reserve Judge Advocates. Another resolution proposing study of the UCMJ by a task force composed mostly of nonmilitary attorneys, which was sponsored by the Washington State Bar Association, was referred to the Standing Committee on Military Law for consideration.

Young Lawyers Division Military Lawyers Study Committee Report. The report of the Young Lawyers Division Military Lawyers Study Committee should be of special interest to young lawyers. This committee, whose members included military and civilian attorneys alike, spent last year studying various issues related to military lawyers. Among the issues considered by the committee were recruitment and placement of military attorneys, participation of military lawyers in the ABA, and the relationship between military attorneys and state bar organizations. Recommendations of the committee included that the Military Service Lawyers Committee (MSLC) be restructured and given substantial financial support from the YLD, that military service representatives to the Young Lawyers Division receive an increased travel budget from the YLD, and that the MSLC sponsor a Joint Conference on Military Law and Military Lawyers each year. Subsequent to the Dallas meeting the YLD Long Range Planning Committee met to consider these recommendations. That committee is expected to recommend to the YLD Executive Committee that the MSLC receive additional funds but that the MSLC not be restructured. Thus, for the upcoming year, the MSLC plans to sponsor a second annual joint conference and to have monthly meetings in the Washington, DC area. Those persons having specific issues that they would like considered by the MSLC are welcome either to attend committee meetings or to send information on those issues to the MSLC chairman at the address listed below.

Upcoming Activities of the YLD. Partly as a result of the report of the Military Lawyers Study Committee, the MSLC is planning to conduct the Second Annual Joint Conference on Military Law and Military Lawyers at the ABA midyear meeting scheduled for Chicago from 1–3 February 1980. Young Lawyers interested in attending this conference, the general purpose of which will be to inform representatives of the activities of military related groups and programs, should plan to attend the midyear meeting. More information on this program will be provided in forthcoming ABA publications.

The Affiliate Outreach Project. The Affiliate Outreach Project, which is sponsored by the YLD, is designed to stimulate the creation of lawyer-sponsored public service projects. The project seeks to accomplish this goal by conducting regional meetings so that participants can exchange ideas and learn about successful projects completed elsewhere.

Each regional meeting utilizes two techniques to accomplish this goal. The first is through panel discussions on such topics as: child advocacy, housing justice reform, jury reform, law related education in public schools, adult education about the law, trial advocacy, consumer law, jail projects, community services, and delivery of legal services to minority and disadvantaged groups. The second technique uses project booths manned by young lawyers offering resource materials and expertise on projects such as: career planning and placement for young lawyers, community service orders as an incarceration alternative, disaster legal assistance, Indochinese refugee legal assistance, Law Day, Law Exploring, law student counseling, legal services to women, media programs, National Institute of Trial Advocacy, and Town Hall Meetings.

One such regional meeting is planned for 18–19 April 1980 in Boston, Massachusetts. Young lawyers delegates from all of the services are encouraging attendance by military lawyers at the Boston meeting. The YLD is planning to offset certain expenses for a limited number of service attorneys attending the meeting in an unofficial capacity. Thus, young lawyers (under 36) who are members of the American Bar Association and who are interested in attending

the Boston meeting should contact Major Ted B. Borek, ABA/YLD Delegate, DAJA-ALL, Pentagon, Washington, DC 20310 (AUTOVON 227-1371), not later than 1 February 1980 for more information.

Other Programs of Professional and Educational Interest. Another Affiliate Outreach Program will be conducted in Las Vegas, Nevada, on November 2–3. Military attorneys are welcome at this meeting also, but the offsetting of expenses will not apply. For those involved with child abuse problems a program entitled "Advocating for Children in the Courts" may be of interest. This program will be conducted by the YLD in conjunction with the Family Law Section of the ABA in Washington, DC, on November 16–17. Persons interested in details should contact Major Borek.

Publications of Interest. A new publication in the child abuse area, which is published monthly by the National Legal Resource Center for Child Advocacy and Protection, received particular acclaim at the ABA Annual Meeting. Copies of the publication, entitled "Legal Response," may be obtained without charge by writing the Director, American Bar Association, NLRC-CAP, 1800 M Street, N.W., Second Floor South, Washington, DC 20036. Another publication, which may be helpful to understanding military related committees in the ABA, is the *Military Service Lawyers Guide To The ABA.* This guide, which is a new publication of the MSLC, includes a description of military related ABA committees as well as other YLD programs that may be of interest to service lawyers. To the extent available, copies may be obtained from Major Borek.

Judiciary Notes

U.S. Army Judiciary

RECORDS OF TRIAL

If for any reason the commander exercising court-martial jurisdiction is changed during some portion of the court-martial process and such change calls for an assumption of command document as required or authorized by paragraphs 3–1*b*, 3–3*b*, and 3–4*a*, AR 600–20, a copy of that document should be included in the record of trial or its allied papers. Staff judge advocates should establish procedures to insure that applicable assumption of command documents are furnished to their office and to the persons responsible for the assembly of the record.

A MATTER OF RECORD

Notes from Government Appellate Division, USALSA

1. Evidence:

The trial counsel should be careful not to become a witness in the case. Although trial counsel should examine the physical evidence prior to trial, he should not become a part of the chain of custody in the process. In several recent cases, the trial counsel received the physical evidence prior to trial, and hence became a part of the chain of custody. This is unnecessary and raises potential problems. The better practice is to have the evidence custodian maintain the evidence until trial. If it is necessary for trial counsel to obtain the evidence, someone else in the office should sign for it and maintain custody of it until trial.

2. Guilty Pleas:

a. The trial counsel can facilitate the conduct

of the military judge's providence inquiry by advising the military judge in open court of the Government's theory on the case. Thus, if the Government's theory is that of an aider and abettor, the military judge should be so advised so that he does not waste time conducting an unnecessary inquiry on the wrong theory. The same would apply in a larceny case, where the Government's theory is that of a larceny by withholding.

b. Trial counsel should pay close attention to the judge's providence inquiry. In several recent cases, the judges have accidently missed an element during the providence inquiry. If the trial counsel is monitoring the inquiry, he can detect the problem and call it to the judge's attention, thus preventing a reversal.

3. Jurisdiction:

In a recent presentencing hearing, the military judge noted that the charges were preferred after the accused's ETS. The defense did not raise an objection, and the trial counsel did not take any action on the matter. The jurisdictional issue has been raised on appeal, and there is no record with which to work. Once the possibility of a jurisdictional issue arises, the trial counsel should show the jurisdictional basis for the charges. If the trial counsel had shown at trial that the Government had moved prior to trial with a view towards prosecution, the problem would have been eliminated. Paragraph 11*d*, MCM, 1969 (Rev.). *United States v. Smith*, 4 M.J. 265 (CMA 1978).

4. Presentencing Matters:

The accused in one recent case pled guilty pursuant to a pretrial agreement. The accompanying stipulation of fact contained a recitation that the accused had received a prior Article 15, setting forth the substance of the offense and the punishment imposed. The copy of the DA Form 2627 was never introduced into evidence. This practice raises numerous appellate issues which are currently pending litigation. The preferred practice is to introduce a complete and legible copy of the DA Form 2627. If a stipulation is to be used instead, it should affirmatively address the *Booker* criteria, *i.e.*, the accused saw counsel or affirmatively waived that right, and the accused affirmatively consented to the proceedings.

5. Providence:

On appeal, a guilty plea may be found to be improvident if it is made under a substantial misunderstanding as to the maximum punishment. *United States v. Lundberg*, 5 M.J. 776 (ACMR 1978). All parties in a recent case agreed that the charges were not multiplicious, and that the maximum sentence was 10 years. The charges of introduction and possession of the same drug at the same time and place are multiplicious for sentencing, and therefore, the maximum possible sentence was 5 years. *United States v. Sloan*, 47 CMR 436 (ACMR 1973). The defendant now claims that his plea was improvident due to the misunderstanding of the maximum sentence. Trial counsel should ensure that the accused is correctly advised as to the maximum sentence. If there is any question, the accused should be fully advised as to the possibility of alternative maximum sentences. If the accused continues with his plea, knowing of the possibility of a lesser maximum possible punishment, the plea will be upheld as provident, even if the maximum possible punishment is subsequently changed for any reason. *United States v. Hedlund*, 7 M.J. 271 (CMA 1979).

6. Review:

In a recent case, the record and review were served on the civilian defense counsel; he checked the block indicating that he had nothing to submit in rebuttal, but failed to sign the form. On appeal, the defendant is alleging that the trial counsel dated and "X"ed the form. This could have been corrected by double checking the record and related papers before distribution, to insure that they were correct and complete.

7. Witnesses:

The trial counsel in a recent case had knowledge that the only Government witness had been treated for an overdose of morphine, and

was undergoing psychiatric care. The trial counsel did not reveal this information to the defense even though the witness' credibility was crucial to the case. The Government, under these circumstances, has an affirmative duty to disclose such information to the defense. Paragraph 44*h* and 115*c*, MCM, 1969 (Rev.); *United States v. Webster*, 1 M.J. 216 (CMA 1976); ABA Standards Relating to The Prosecution Function, para. 3.11(a).

RESERVE AFFAIRS ITEMS

Reserve Affairs Department, TJAGSA

1. Mobilization Designee Vacanies

A number of installations have recently had new mobilization designee positions approved and applications may be made for these and other vacancies which now exist. Interested JA Reservists should submit Application for Mobilization Designation Assignment (DA Form 2976) to The Judge Advocate General's School, ATTN: Lieutenant Colonel William Carew, Reserve Affairs Department, Charlottesville, Virginia 22901.

Current positions available are as follows:

GRD	PARA	LIN	SEQ	POSITION	AGENCY	CITY
LTC	36C	04	01	Legal Officer	Ofc DCS Opns Plans	Washington
LTC	07	03A	02	Leg Counsel	Ofc Ch, Legis Ln	Washington
COL	05	01A	01	Legal Officer	Ofc Gen Counsel	Washington
COL	04	02	02	App Mil Judge	USA Legal Svcs	Falls Church
COL	04	02	04	App Mil Judge	USA Legal Svcs	Falls Church
MAJ	06	07	05	Military Judge	USA Legal Svcs	Falls Church
MAJ	08	05	03	Judge Advocate	USA Legal Svcs	Falls Church
LTC	09	04	01	Judge Advocate	USA Legal Svcs	Falls Church
MAJ	09	06	03	Judge Advocate	USA Legal Svcs	Falls Church
CPT	09	08	02	Judge Advocate	USA Legal Svcs	Falls Church
LTC	05B	03	02	Clms JA	USA Clms Svc	Fort Meade
LTC	11A	04	01	JA Opinions Br	OTJAG	Washington
COL	18C	02	01	Asst C Clas Invt	OTJAG	Washington
LTC	05B	03	03	Sen Instr	TJAGSA	Charlottesville
MAJ	04	02	01	Asst SJA	MTMC, Eastern Area	Bayonne
CPT	01	05	01	Judge Advocate	Gulf Outport	New Orleans
MAJ	04	01A	01	Asst SJA	MTMC, Western Area	Oakland
LTC	26A	01A	01	Legal Advr	USA TSARCOM	St. Louis
CPT	26A	02B	01	Legal Advr	USA TSARCOM	St. Louis
MAJ	26C	01A	01	Legal Advr	USA TSARCOM	St. Louis
MAJ	26D	01A	01	Legal Advr	USA TSARCOM	St. Louis
LTC	04H	02	01	Dep SJA	USA CERCOM	Ft. Monmouth
CPT	08	03A	01	Asst JA	172d Inf Bde	Ft. Richardson
CPT	08	03A	02	Asst JA	172d Inf Bde	Ft. Richardson
CPT	57	02A	01	Asst JA	172d Inf Bde	Ft. Richardson
MAJ	03	04	01	Asst SJA	USA Garrison	Ft. Ord
MAJ	03	04A	01	Leg Advisor	USA Garrison	Ft. Ord
CPT	03A	04	01	Defense Counsel	USA Garrison	Ft. Ord
CPT	03A	04	02	Defense Counsel	USA Garrison	Ft. Ord
CPT	03B	02	01	Asst SJA	USA Garrison	Ft. Ord

GRD	PARA	LIN	SEQ	POSITION	AGENCY	CITY
CPT	03B	02	02	Asst SJA	USA Garrison	Ft. Ord
CPT	03B	02	04	Asst SJA	USA Garrison	Ft. Ord
CPT	04B	02A	02	Asst JA	USA Garrison	Ft. Meade
LTC	03	01	01	SJA	101st Abn Div	Ft. Campbell
MAJ	03A	01	01	Ch, Trial Counsel	101st Abn Div	Ft. Campbell
CPT	03A	02	04	Trial Counsel	101st Abn Div	Ft. Campbell
MAJ	03B	01	01	Ch, Def Counsel	101st Abn Div	Ft. Campbell
CPT	03B	02	01	Defense Counsel	101st Abn Div	Ft. Campbell
CPT	03B	02	02	Defense Counsel	101st Abn Div	Ft. Campbell
CPT	03B	02	03	Defense Counsel	101st Abn Div	Ft. Campbell
CPT	03B	02	04	Defense Counsel	101st Abn Div	Ft. Campbell
MAJ	03C	01	01	Ch, Admin Law Br	101st Abn Div	Ft. Campbell
CPT	03C	02	01	Asst SJA	101st Abn Div	Ft. Campbell
CPT	03D	05	01	Asst SJA-DC	USA Garrison	Ft. Stewart
CPT	03D	05	02	Asst SJA-DC	USA Garrison	Ft. Stewart
MAJ	03E	01	01	Chief	USA Garrison	Ft. Stewart
CPT	03E	03	01	Asst SJA	USA Garrison	Ft. Stewart
CPT	52B	03	01	Asst SJA-DC	USA Garrison	Ft. Stewart
CPT	52C	01	01	Asst SJA	USA Garrison	Ft. Stewart
CPT	52C	01	02	Asst SJA	USA Garrison	Ft. Stewart
LTC	03	02	01	Dep SJA	USA Garrison	Ft. Hood
MAJ	03B	02	01	Trial Counsel	USA Garrison	Ft. Hood
MAJ	04	04	01	Asst SJA	USA Garrison	Ft. Sam Houston
MAJ	03B	01	01	Ch, Defense Coun	5th Inf Div	Ft. Polk
MAJ	03B	02	01	Ch, Trial Counsel	5th Inf Div	Ft. Polk
CPT	03B	03	01	Def Counsel	5th Inf Div	Ft. Polk
CPT	03B	03	02	Def Counsel	5th Inf Div	Ft. Polk
CPT	03B	03	03	Def Counsel	5th Inf Div	Ft. Polk
CPT	03B	03	04	Def Counsel	5th Inf Div	Ft. Polk
CPT	03B	04	02	Trial Counsel	5th Inf Div	Ft. Polk
CPT	03B	04	03	Trial Counsel	5th Inf Div	Ft. Polk
CPT	03B	04	04	Trial Counsel	5th Inf Div	Ft. Polk
CPT	03D	01A	01	Asst JA	USA Garrison	Ft. Sheridan
MAJ	02A	02	01	Ch, Def Counsel	1st Inf Div	Ft. Riley
MAJ	02B	03	01	Ch, Legal Asst	1st Inf Div	Ft. Riley
CPT	02B	04	01	Asst JA	1st Inf Div	Ft. Riley
CPT	02C	02	01	Asst JA	1st Inf Div	Ft. Riley
CPT	01H	02A	01	JA	Cdr, Ft McCoy	Sparta
CPT	01H	02A	02	JA	Cdr, Ft McCoy	Sparta
CPT	01H	02A	03	JA	Cdr, Ft McCoy	Sparta
CPT	01H	02A	04	JA	Cdr, Ft McCoy	Sparta
MAJ	01I	01	01	Mil Af Leg Ast O	Cdr, Ft McCoy	Sparta
CPT	01I	02	01	Mil Af Leg Ast O	Cdr, Ft McCoy	Sparta
CPT	01I	02	02	Mil Af Leg Ast O	Cdr, Ft McCoy	Sparta
MAJ	03B	01	01	Ch, Trial Counsel	9th Inf Div	Ft. Lewis
MAJ	03C	01	01	Ch, Defense Coun	9th Inf Div	Ft. Lewis
MAJ	03D	01	01	Ch, Admin Law Br	9th Inf Div	Ft. Lewis
CPT	03D	02	01	Asst SJA	9th Inf Div	Ft. Lewis

GRD	PARA	LIN	SEQ	POSITION	AGENCY	CITY
CPT	03D	03	01	Asst SJA	9th Inf Div	Ft. Lewis
MAJ	03E	01	01	Ch, Leg Asst Br	9th Inf Div	Ft. Lewis
CPT	03E	03	01	Leg Asst Off	9th Inf Div	Ft. Lewis
CPT	03E	03	02	Leg Asst Off	9th Inf Div	Ft. Lewis
CPT	21J	01	01	JA	9th Inf Div	Ft. Lewis
CPT	62C	05	01	Asst Crim Law Off	FORSCOM	Ft. McPherson
CPT	03B	03	01	Asst JA Instr	USA Trans Cen	Ft. Eustis
MAJ	05F	02	01	Mil Affrs Off	USA Armor Cen	Ft. Knox
MAJ	05F	03	01	Leg Asst Off	USA Armor Cen	Ft. Knox
LTC	04A	02	01	Asst Ch, Mil Jus	USA Inf Cen	Ft. Benning
MAJ	04A	03	01	Sr Def Counsel	USA Inf Cen	Ft. Benning
CPT	04A	05	01	Def Counsel	USA Inf Cen	Ft. Benning
CPT	04A	07	01	Trial Counsel	USA Inf Cen	Ft. Benning
LTC	04B	02	01	Asst Ch, MALAC	USA Inf Cen	Ft. Benning
CPT	04B	04	01	Admin Law Off	USA Inf Cen	Ft. Benning
CPT	04B	05	01	Admin Law Off	USA Inf Cen	Ft. Benning
CPT	04B	05	02	Admin Law Off	USA Inf Cen	Ft. Benning
CPT	04B	07	02	Leg Asst Off	USA Inf Cen	Ft. Benning
CPT	04B	07	03	Leg Asst Off	USA Inf Cen	Ft. Benning
CPT	04B	08	01	Claims Off	USA Inf Cen	Ft. Benning
MAJ	09A	02	01	Asst SJA	USA Signal Cen	Ft. Gordon
MAJ	09B	02	01	Asst SJA	USA Signal Cen	Ft. Gordon
MAJ	09B	02	02	Asst SJA	USA Signal Cen	Ft. Gordon
CPT	09C	03	01	Asst SJA	USA Signal Cen	Ft. Gordon
CPT	22D	22	01	Instr, OCS Tng	USA Signal Cen	Ft. Gordon
CPT	22D	22	02	Instr, OCS Tng	USA Signal Cen	Ft. Gordon
MAJ	28B	02	01	Mil Justice Off	US AD Cen	Ft. Bliss
MAJ	28B	04	01	Trial Counsel	US AD Cen	Ft. Bliss
CPT	28C	03	01	Defense	US AD Cen	Ft. Bliss
MAJ	28D	03	01	Admin Law	US AD Cen	Ft. Bliss
MAJ	04A	05	01	Instr, Mid East	USAIMACA Satl Sch E	Ft. Bragg
MAJ	12	02	01	Asst JA	ARNG TSA Cp Atterbury	Edinburg
MAJ	12	02	02	Asst JA	ARNG TSA Cp Atterbury	Edinburg

2. Reserve Vacancies

The 411th Engineer Brigade based at Floyd Bennett Field, Brooklyn, has two captain positions open. These positions are paid slots. If interested please call Major Edward Raskin at the following number: (516) 224-5550 or at his residence (516) 567-2025. Major Raskin may be contacted by letter at the following address: Major Edward Raskin, HQS, 411th Engineer Brigade, Armed Forces Reserve Center, Floyd Bennett Field, Brooklyn, New York 11234.

3. Reserve Component Technical (On-Site) Training AY 1979–80

The following pen and ink changes should be made to the AY 79–80 on-site schedule published in the October Army Lawyer:

(1) The correct site for the St. Louis training (1 December 1979) is St. Louis County Bar Association Conference Room, Clayton Inn, Clayton, Missouri.

(2) The time for the Vancouver Barracks training (19 January 1980) is 0800 (not 1800) to 1600.

(3) The dates for the Louisville, KY and Harrisburg, PA training should reflect 19 April 1980 and 27 April 1980 respectively.

CLE NEWS

TJAGSA Course Notes

1. Law of War Workshop. The 13th Law of War Workshop (5F–F42) will be held 7–11 January 1980. This course has been significantly revised in the past year. The course now emphasizes the practical effect of the law of war on a unit's day-to-day operations in peace as well as war. Attention is also given the interaction between legal officers and commanders in the preparation or review of operations plans. This is especially significant in view of the requirements which the 1977 Protocols place on all commanders and their legal staffs, irrespective of their mission. Consequently, the course is designed for non-attorneys as well as attorneys. To make the course more realistic, practical exercises and "war games" have been introduced, in which actual tactical scenarios are presented to the student for resolution. Staff judge advocates are urged to make this course known to their operational counterparts as potential attendees.

2. Contract Attorneys' Advanced Course. The theme for the 10th Contract Attorneys' Advanced Course is Recent and Proposed Changes Affecting Government Contract Law. The course will be held 7–11 January 1980. Among the topics to be covered are 8(a) contracting under Public Law 95–507, contracting for commercial and industrial type activities (CITA), changes and the Contract Disputes Act of 1978. Guest speakers will include: Professor Ralph Nash of The George Washington University; Mr. Eldon Crowell, Partner in Crowell and Moring; Mr. James Roberts, Office of the General Accounting Office; and, Mr. Oliver Kennedy, Assistant Comptroller of the Army for Fiscal Policy.

3. Criminal Law New Developments Course. Although the 4th Criminal Law New Developments Course (5F–F35) does not appear in the TJAGSA Annual Bulletin, it has been scheduled to be taught 25–27 August 1980.

Length: 3 days.

Purpose: To provide counsel and criminal law administrators with information regarding recent developments and trends in military criminal law. This course is revised annually.

Prerequisites: This course is limited to active duty judge advocates and civilian attorneys who serve as counsel or administer military criminal law in a judge advocate office. Students must not have attended TJAGSA resident criminal law CLE, Basic or Graduate courses, within the 12-month period immediately preceding the date of the course.

Substantive Content: Government/defense counsel post trial duties; speedy trial; pretrial agreements; extraordinary writs; 5th Amendment and Article 31; search and seizure; recent trends in the United States Court of Military Appeals; jurisdiction; witness production; mental responsibility; military corrections; pleadings; developments in substantive law; topical aspects of current military law.

4. TJAGSA CLE Courses.

December 4–5: 3d Contract Attorneys' Workshop (5F–F15).

December 10–13: 7th Military Administrative Law Developments (5F–F25).

January 7–11: 10th Contract Attorneys' Advanced (5F–F11).

January 7–11: 13th Law of War Workshop (5F–F42).

January 14–18: 1st Negotiations, Changes & Terminations (5F–F14).

January 21–24: 9th Environmental Law (5F–F27).

January 28–February 1: 8th Defense Trial Advocacy (5F–F34).

February 4–April 4: 92d Judge Advocate Officer Basic (5–27–C20).

February 4–8: 51st Senior Officer Legal Orientation (5F–F1).

February 11–15: 6th Criminal Trial Advocacy (5F–F32).

February 25–29: 19th Federal Labor Relations (5F–F22).

March 3–14: 83d Contract Attorneys' (5F–F10).

March 10–14: 14th Law of War Workshop (5F–F42).

March 17–20: 7th Legal Assistance (5F–F23).

March 31–April 4: 52d Senior Officer Legal Orientation (5F–F1).

April 8–9: 2d U.S. Magistrate's Workshop (5F–53).

April 9–11: 1st Contract, Claims, Litigation & Remedies (5F-F13).

April 21–25: 10th Staff Judge Advocate Orientation (5F–F52).

April 21–May 2: 84th Contract Attorneys' Course (5F–F10).

April 28–May 1: 53d Senior Officer Legal Orientation (War College) (5F–F1).

May 5–16: 2d International Law II (5F–F41).

May 7–16: 2d Military Lawyer's Assistant (512–71D20/50).

May 19–June 6: 20th Military Judge (5F–F33).

May 20–23: 11th Fiscal Law (5F–F12).

May 28–30: 1st SJA Responsibilities Under New Geneva Protocols (5F–F44).

June 9–13: 54th Senior Officer Legal Orientation (5F–F1).

June 16–27: JAGSO.

June 16–27: 2d Civil Law (5F-F21).

July 7–18: USAR SCH BOAC/JARC C&GSC.

July 14–August 1: 21st Military Judge (5F–F33).

July 21–August 1: 85th Contract Attorneys' (5F–F10).

August 4–October 3: 93d Judge Advocate Officer Basic (5–27–C20).

August 4–8: 10th Law Officer Management (7A–713A).

August 4–8: 55th Senior Officer Legal Orientation (5F–F1).

August 25–27: 4th Criminal Law New Developments (5F–F35).

September 10–12: 2d Legal Aspects of Terrorism (5F–F43).

September 22–26: 56th Senior Officer Legal Orientation (5F–F1).

5. Civilian Sponsored CLE Courses.

For further information on civilian courses, please contact the institution offering the course, as listed below:

AAJE: American Academy of Judicial Education, Suite 539, 1426 H Street NW, Washington, DC 20005. Phone: (202) 783-5151.

ALI-ABA: Donald M. Maclay, Director, Office of Courses of Study, ALI-ABA Committee on Continuing Professional Education, 4025 Chestnut St., Philadelphia, PA 19104. Phone: (215) 243-1630.

ATLA: The Association of Trial Lawyers of America, Education Department, P.O. Box 3717, 1050 31st St. NW Washington, DC 20007. Phone: (202) 965-3500.

FBA (FBA-BNA): Conference Secretary, Federal Bar Association, Suite 420, 1815 H Street NW, Washington, DC 20006. Phone: (202) 638-0252.

FPI: Federal Publications, Inc., Seminar Division Office, Suite 500, 1725 K Street NW, Washington, DC 20006. Phone: (202) 337-7000.

GWU: Government Contracts Program, George Washington University, 2000 H Street NW, Rm. 303 D2, Washington DC 20052. Phone: (202) 676-6815.

ICM: Institute for Court Management, Suite 210, 1624 Market St., Denver, CO 80202. Phone: (303) 543-3063.

NCAJ: National Center for Administration of Justice, 1776 Massachusetts Ave., NW, Washington, DC 20036. Phone (202) 466-3920.

NCDA: National College of District Attorneys, College of Law, University of Houston, Houston, TX 77004. Phone: (713) 749-1571.

NJC: National Judicial College, Reno, NV 89557. Phone: (702) 784-6747.

NPI: National Practice Institute, 861 West Butler Square, Minneapolis, MN 55403. Phone: 1-800-328-4444 (In MN call (612) 338-1977).

PLI: Practising Law Institute, 810 Seventh Avenue, New York, NY 10019. Phone: (212) 765-5700.

December

2–14: NJC, Decision Making: Process, Skills, and Techniques (Graduate), University of Nevada, Reno, NV.

3–5: GWU, Patents and Technical Data, San Francisco, CA. Cost: $450.

3–5: FPI, Inspection, Acceptance & Warranties, Tropicana Hotel, Las Vegas, NV. Cost: $525.

3–7: FPI, The Practice of Equal Employment, Sheraton National/Arlington, VA, Washington, DC. Cost: $625.

5–7: FPI, Contract Costs Course, Hospitality House, Williamsburg, VA. Cost: 525.

6–7: PLI, Construction Claims Workshop, New York Sheraton Hotel, New York, NY. Cost: $225.

6–7: PLI, Income Taxation of Estates and Trusts, Hotel Mark Hopkins, San Francisco, CA. Cost: $225.

6–7: FBA, U.S./Mexico Trade Law Conference, Fairmont Hotel, Dallas, TX.

9–14: NCDA, Advanced Prosecutor's Investigators School, Huntsville, TX.

9–14: NJC, Court Administration, University of Nevada, Reno, NV.

12–14: FPI, Inspection, Acceptance & Warranties, Hospitality House, Williamsburg, VA. Cost: $525.

13–28: European Seminar in Criminal Justice, Freiburg, Germany. Cost: Approx. $800 including air fare and lodging. Contact Robert E. Page, Lake City Community College, Lake City, Lake City, FL 32055.

13–15: FBA, Seminar on Equal Employment Opportunity Law, Don Ceaser Beach Hotel, St. Petersburg Beach, FL.

13–14: PLI, Criminal Trial Tactics for Prosecution and Defense: The Constitution and the Criminal Lawyer, Hyatt Regency Hotel, San Francisco, CA. Cost: $200.

13–14: PLI, Hospital Liability 1979, Los Angeles Bonaventure Hotel, Los Angeles, CA. Cost: $185.

13–14: PLI, Basic Labor Relations, Hyatt Regency Hotel, San Francisco, CA. Cost: $185.

14–15: FBA/WBA, 2nd Annual Conference on Rules of Civil Procedure, Hyatt Regency Hotel, Washington, D. C.

17–18: PLI, Twelfth Annual Immigration and Naturalization Institute, Stanford Court Hotel, San Francisco, CA. Cost: $190.

January

6–11: NCDA, Prosecutor's Office Administrator Course, Part I, Houston, TX.

14–15: PLI, Income Taxation of Estates and Trusts, The Biltmore Hotel, New York City, NY. Cost: $225.

17–18: PLI, Criminal Trial Tactics for Prosecution and Defense: The Constitution and the Criminal Lawyer, Barbizon Plaza Hotel, New York City, NY. Cost: $200.

20–23: NCDA, Prosecution of Arson, Atlanta, GA.

24-26: ALI-ABA, The New Federal Bankruptcy Code, New Orleans, LA.

February

10–13: NCDA, Trial Law & Evidence, Denver, CO.

25–26: GWU, Labor Standards, Washington, D. C. 20052. Cost: $325.

JAGC PERSONNEL SECTION

PPTO, OTJAG

1. RA Promotions

CAPTAIN

BURTON, John T.	27 Jul 79
CARLTON, Roy D.	9 Oct 79
CULPEPPER, VanNoy	27 Sep 79
ROTHLEIN, Julius	27 Jul 79

2. AUS Promotions

MAJOR

BADO, John T.	2 Aug 79

CW3

BETTERIDGE, Kendall	2 Sep 79

3. Reassignments

LIEUTENANT COLONEL	*FROM*	*TO*
HANFT, John W.	USALSA WASH DC	USALSA, Europe
MAJOR		
JABLONSKI, Robert	Ft Knox, KY	Ft McPherson, GA
JEFFRESS, Walton	USALSA	Korea
CAPTAIN		
DAVIS, Arthur H.	Europe	USALSA
GALLIGAN, John	Europe	USALSA
HANSEN, Niels E.	Ft Jackson, SC	Ft Sheridan, IL
JENSEN, Donald	Korea	White Sands Missile Range, NM
KUKLOK, James G.	Ft Lewis, WA	Korea
LYNCH, James J.	Ft Bragg, NC	Korea
McATAMNEY, James	Europe	USALSA
MORGAN, Michael	Europe	Ft Ord, CA
PASSAR, Arthur	Europe	USALSA
REILLY, Vincent	USALSA	Europe
ROBINSON, John	Europe	USALSA
SILVA, Theodore	Ft Leonard Wood, MO	Korea
STRECKER, David	Europe	Ft McPherson, GA
WAMSTED, Michael	Ft Hood, TX	Ft Sheridan, IL

Back Issue of the Military Law Review and The Army Lawyer

All issues of the *Military Law Review* published prior to Volume 45 (DA Pam 27-100-45, July 1969) have been rescinded by Department of the Army Circular 310-18, 15 September 1979. All issues of *The Army Lawyer* published prior to July 1977 (DA Pam 27-50-55) and all issues of the Judge Advocate Legal Service have also been rescinded. This means that these pamphlets are out of print.

The Judge Advocate General's School has a limited number of copies of some back issues of *The Army Lawyer* and *Military Law Review*. Copies are available of the following issues of *The Army Lawyer:*

27-50-8 (August 1973)
27-50-10 (October 1973)
27-50-14 (February 1974)

27-50-15 (March 1974)
27-50-16 (April 1974)
27-50-17 (May 1974)
27-50-19 (July 1974)
27-50-22 (October 1974)
27-50-23 (November 1974)
27-50-24 (December 1974)
27-50-25 (January 1975)
27-50-27 (March 1975)
27-50-28 (April 1975)
27-50-29 (May 1975)
27-50-31 (July 1975)
27-50-32 (August 1975)
27-50-33 (September 1975)
27-50-34 (October 1975)
27-50-40 (Apr 1976)
27-50-41 (May 1976)
27-50-42 (June 1976)
27-50-46 (October 1976)
27-50-47 (November 1976)
27-50-48 (December 1976)
27-50-49 (January 1977)
27-50-50 (February 1977)
27-50-58 (October 1977)
27-50-60 (December 1977)
27-50-61 (January 1978)
27-50-64 (April 1978)
27-50-65 (May 1978)
27-50-68 (August 1978)
27-50-69 (September 1978)
27-50-70 (October 1978, Cumulative Index Issue)
27-50-71 (November 1978)
27-50-72 (December 1978)

and all 1979 issues of *The Army Lawyer*. The following issues of the *Military Law Review* are also available:

27-100-11
27-100-12
27-100-13
27-100-15
27-100-17
27-100-18
27-100-19
27-100-20
27-100-21
27-100-24 (Including C1)
27-100-25
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27-100-83
27-100-84

Copies of these issues may be requested by writing to The Judge Advocate General's School, ATTN: JAGS-DDL, Charlottesville, Virginia 22901.

CURRENT MATERIALS OF INTEREST

Articles

Shea, Architect-Engineer Liability Suits by the Government: A Case for Expanding Jurisdiction of the A.S.B.C.A., 19 A.F.L. REV. 250 (1977).

Murchison, The Impact of the Soldiers' and Sailors' Civil Relief Act on State Taxation of Mobile Homes, 19 A.F.L. REV. 235 (1977).

KKK Activities in Department of the Navy Installations and Units, Department of the Navy, *Off the Record,* Issue No. 79 (15 August 1979), Enclosure 6 to OTR–79.